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2014 IL App (1st) 1-12-1961WC -U

FILED: December 26, 2014

NO. 1-12-1961WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

THOMAS SITARZ,)	Appeal from
)	Circuit Court of
Appellant,)	Cook County
)	No. 11L50860
v.)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (Smurfit-Stone Container)	
Corporation, Appellee).)	Honorable
)	Margaret Brennan,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Stewart
concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's determination claimant failed to prove an accident that arose out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 On February 13, 2007, claimant, Thomas Sitarz, filed an application for adjustment of claim (docketed case No. 07WC06018) pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer Smurfit-Stone Container Corporation. He alleged that he sustained multiple injuries in

a work accident that occurred on May 4, 2006. According to the application for adjustment of claim, claimant noted the accident occurred as a result of repetitive lifting, pushing, and pulling. In August 2007, claimant's claim was consolidated with a separate claim (docketed case No. 07WC06019) which named Altivity Packaging (Altivity), the employer's successor as of June 30, 2006, as respondent and which alleged a work accident on January 29, 2007. The case against Altivity is not at issue here.

¶ 3 Following a hearing over the course of two days in May and June 2010, the arbitrator concluded that on May 4, 2006, claimant suffered an accident that arose out of and in the course of his employment and that claimant's nerve entrapment condition was causally related to that accident. The arbitrator ordered the employer to pay (1) temporary total disability (TTD) benefits for 90 weeks; (2) \$21,233.98 in outstanding medical bills; and (3) permanent partial disability (PPD) benefits for 25 weeks. Regarding the Altivity case, the arbitrator found claimant was not credible and concluded that claimant failed to prove a compensable work injury occurred on January 29, 2007.

¶ 4 The employer appealed the arbitrator's decision in case No. 07WC06018. On review, the Illinois Workers' Compensation Commission (Commission) unanimously reversed the arbitrator's decision finding claimant failed to prove an accident that arose out of and in the course of employment.

¶ 5 On judicial review, the circuit court of Cook County confirmed the Commission's decision. This appeal followed.

¶ 6 I. BACKGROUND

¶ 7 The following factual evidence relevant to this appeal was elicited during an arbitration hearing that took place on May 12 and June 8, 2010.

¶ 8 Claimant, who was 30 years old at the time of arbitration, testified he began working for the employer in November 1999. On May 4, 2006, claimant worked as a "floater" and performed inventory work for the employer. Claimant explained that his inventory job consisted of counting inventory from production the previous day, moving pallets loaded with four 55-gallon drums of liquid adhesive (each drum weighed 500 pounds) with a manual pallet jack, and lifting 5-gallon buckets which weighed approximately 45 to 50 pounds from skids and transporting them to a designated room where he stacked them against a wall. Claimant also loaded and unloaded rolls of material that weighed up to 2000 pounds onto and off of a machine with the assistance of a hydraulic hoist.

¶ 9 Claimant testified that on May 4, 2006, he was pushing a roll of material that weighed between 1,000 and 1,500 pounds toward a machine with a manual pallet jack when he "felt a really sharp burning pain, pain [he] never felt before in the past that was really severe" in the region of his groin. He stopped working and notified his supervisor, Dick Ford, that "[he] couldn't go on." Claimant then left work and went to the emergency department at Kishwaukee Community Hospital. According to Kishwaukee's record, claimant's chief complaint was "I think I have a hernia" and stated claimant "experience[ed] right sided groin discomfort the past 24 hours" and "that [claimant] felt as though there was a prominence over the right suprapubic region, prompting emergency room visit today." The record also noted, "[t]he [claimant] states intermittently over the past two weeks he has had discomfort in the same region and also reports that he is required to perform heavy lifting and pushing activities at work." Claimant was diagnosed with an "[a]cute right groin strain, possible occult hernia," and he was restricted from lifting more than five pounds.

¶ 10 On May 5, 2006, claimant saw his primary care physician, Dr. Kristen M.

Ufferman, who diagnosed bilateral inguinal hernias and referred him to Dr. Beatrice Klade, a general surgeon, for a surgical consultation. Claimant met with Dr. Klade on May 15, 2006, at which time she noted claimant's chief complaint was a "[two to] three-week history of right groin pain and recent onset of left groin pain." Dr. Klade diagnosed "bilateral symptomatic inguinal hernia" and scheduled claimant for surgery.

¶ 11 Upon learning that surgery was necessary, claimant testified he sought guidance from Linda Rioux, the employer's "human resources lady," as well as his "advisor" and "close friend," regarding whether he should file a claim under workers' compensation or submit the claim under his group insurance. Claimant explained that he consulted Rioux because he was involved in two "near miss accidents" during the previous year and he "didn't want to get fired from [his] job." According to claimant, Rioux told him "it [was] probably wise to [claim] it under [his] insurance" due to a recent near-death incident at the facility. Rioux denied having this conversation with claimant.

¶ 12 Dr. Klade surgically repaired claimant's bilateral inguinal hernias on May 23, 2006. Although claimant denied any prior groin injury, medical records introduced by Altivity showed that claimant saw a Dr. Asad Ali Shah in February 2002 for a possible hernia with pain in groin when walking. That same month, claimant saw a Dr. Raul L. Aron who determined claimant did not have a hernia at that time, but did have tenderness in the groin region.

¶ 13 Claimant testified that in the two weeks prior to the May 4, 2006, accident, he had experienced discomfort in his groin upon exertion at work. Claimant further testified that in the two months prior to the May 4, 2006, accident, he lost approximately 40 pounds. Claimant attributed his weight loss to a "Slim Fast" diet and running on a treadmill located in the basement of his house. He denied lifting weights, having exercise equipment in his home other than the

treadmill, or being a member of a gym. Claimant's wife, Tiffany Sitarz, testified that the only exercise equipment in their home was a treadmill. She further testified she never observed claimant lifting any free weights during the time period from 2005 to 2008.

¶ 14 Guy Whalon testified that he worked for the employer from September 2004 through September 2008 as a plant manager and that he saw claimant on a daily basis. Whalon testified that prior to the May 4, 2006, accident, he noticed claimant underwent "a considerable physical appearance change" and had "bec[o]me much more athletic, muscular built [*sic*] up over a period of a couple of months." According to Whalon, he and claimant engaged in conversations around the time of the accident during which claimant "talked about how much weight he was bench pressing and squatting and, you know, the number of miles that he was running on a daily basis." When asked what claimant told him about bench pressing, Whalon stated, "[j]ust that he had been bench pressing I want to say two and a quarter, 225, pounds; but—my strong recollection is the squatting of weights because I just happen to remember that."

¶ 15 Whalon further testified he had a conversation with claimant shortly after the May 4, 2006, accident which he memorialized in a typed email to Rioux dated May 16, 2008. In the email, Whalon wrote that claimant told him, he "probably injured [*sic*] himself outside of [work], but PROBABLY AGGRAVATED [*sic*] HERE." Whalon further noted that claimant "did admit to lifting weights at home, but half-heartedly explained that he only lifted 'very light weights' and did more cardio than anything else." According to Whalon, "[t]his is a direct contradiction to the statements and bragging that he had shared with Dick Ford and Eric Runde in previous conversations." Whalon opined, "I believe that [claimant] is looking for a promise or guarantee that he will have full employment with us if he does not file a W.C. case against [us] and get 'light duty' at 40 hours a week during his surgical [*sic*] recovery period.

¶ 16 Claimant denied telling Whalon that he may have injured himself outside of work. According to claimant, when Whalon asked him whether he injured himself outside of the workplace, claimant responded he did not "because all the lifting I do is here at the plant, because all I do is cardio at home." Claimant further stated that, with the exception of occasionally picking up his children, he did no "lifting" outside of work.

¶ 17 Eric Runde testified that he previously worked for the employer as a production manager. Runde stated that around the time of the May 4, 2006, accident, claimant "appear[ed] to be more muscular." Runde testified he had conversations with claimant regarding his transformation and, although he could not remember exactly what the discussions entailed, Runde recalled claimant "was getting into some weight lifting type exercises." Claimant acknowledged having a discussion regarding his weight loss with Runde, but he testified that conversation pertained only to his diet.

¶ 18 At the time of the hearing in this case, Dick Ford was deceased and the details of any alleged conversation between Ford and claimant (referenced in Whalon's email) are not known.

¶ 19 Dr. Klade authorized claimant to return to light-duty work on June 22, 2006, and full-duty work on July 17, 2006.

¶ 20 On June 30, 2006, the employer sold its operations to Altivity.

¶ 21 Upon returning to unrestricted work duties, claimant testified he "started feeling pain again in [his] groin region" any time he exerted himself by pushing, pulling, or lifting. On July 20, 2006, claimant again felt pain in his right groin area upon lifting a 35-pound bucket. He reported the injury to the employer and immediately sought treatment at Concentra Medical Center (Concentra), where he was examined by Dr. William Weaver, an occupational medicine

specialist. Dr. Weaver diagnosed claimant with right "trunk strain, inguinal." Dr. Weaver imposed restrictions upon claimant including no pushing, pulling, or repetitive lifting over 15 pounds, limited bending to no more than 10 times per hour, and prescribed physical therapy. According to a July 31, 2006, physical therapy record, claimant reported "he had soreness in the groins *** [three] hours after helping lift items at a garage sale this weekend." At the hearing, claimant explained he lifted fold-out tables at the garage sale.

¶ 22 At a follow-up appointment on August 7, 2006, Dr. Weaver noted claimant "feels the pattern of symptoms is worsening. States increased pain in right groin area and states this increased with exercises today. States he was doing alot [*sic*] of squatting over the weekend (this likely aggravated his right groin symptoms)." On August 14, 2006, Dr. Weaver noted claimant felt better and he released claimant to return to full-duty work on that date. Dr. Weaver testified that in his opinion, claimant's act of lifting the 35-pound bucket was causally related to the inguinal strain sustained by claimant on July 20, 2006. Dr. Weaver did not offer any opinion regarding the cause of claimant's initial hernia injuries diagnosed in May 2006. Dr. Weaver testified that hernias tend to develop over time and that many people who develop hernias have a congenital predisposition for them.

¶ 23 Claimant testified that in October 2006, he "felt more pain again in [his] groin and [he] couldn't deal with it" after he "did a lot of intense labor for the day." Claimant sought treatment with Dr. Weaver who did not impose any work restrictions at that time.

¶ 24 On January 29, 2007, claimant testified he loaded four barrels of hazardous waste, each weighing approximately 500 pounds, onto a skid. As he was using a manual pallet jack to push the barrels up a 45-degree incline, claimant again felt pain in his groin. Claimant reported the injury to Rioux and immediately sought treatment at Concentra where he saw Dr.

Weaver. Dr. Weaver diagnosed claimant with "trunk strain, inguinal" and imposed restrictions including no pushing, pulling, or repetitive lifting over 10 pounds and limited bending to no more than 12 times per hour.

¶ 25 Claimant testified that Altivity terminated his employment on February 1, 2007. However, a February 5, 2007, report from Dr. Ufferman indicates his employment was terminated on that date due to his "inability to perform job functions [due to] chronic groin pain."

¶ 26 On February 19, 2007, claimant saw Dr. Klade. According to Dr. Klade, claimant informed her that he was able to perform light-duty work with no symptoms, but when placed on full-duty work, he experienced discomfort in the right groin. In an undated letter to claimant's attorney, Dr. Klade noted that as of February 19, 2007, claimant "did not have any evidence of recurrence of either inguinal hernia" and that both incisions were healed and intact. The letter further noted that claimant's symptoms completely abated when he was on light duty, and thus, "a limitation on his lifting [to less than 30-40 pounds] would be a reasonable measure to avoid any recurrence of his symptoms." Dr. Klade did not render an opinion as to whether the hernias diagnosed in May 2006 were work related.

¶ 27 At a follow-up appointment on March 1, 2007, Dr. Weaver noted claimant had no current right inguinal area complaints and released claimant from his care.

¶ 28 After being released to full-duty work in March 2007, claimant testified he collected unemployment for some time while he looked for work. In the summer of 2007, claimant enrolled in college part-time. In the fall of 2007, claimant enrolled in college on a full-time basis. In 2007 and 2008, claimant also coached volleyball on a part-time basis and, in the summer of 2008, claimant accepted a job as a part-time custodian at the same school where he coached volleyball. Claimant denied injuring himself while working as a custodian.

¶ 29 On June 11, 2007, at the request of Altivity, claimant saw Dr. Daniel Dahlinghaus, a general surgeon, for an independent medical examination. In a letter dated June 11, 2007, Dr. Dahlinghaus noted that claimant experienced pain upon coughing, sneezing, or straining. Specifically, Dr. Dahlinghaus noted claimant experienced pain when doing sit-ups, carrying groceries, and climbing or descending stairs. While Dr. Dahlinghaus found no indication of existing hernias or weakness in claimant's groin, he opined that claimant "does have probable nerve entrapment with the right being greater than the left." Dr. Dahlinghaus noted that claimant "will require evaluation by a pain clinic for possible treatment of the nerve entrapment pain by radiofrequency ablation of the involved nerve." Dr. Dahlinghaus testified that the nerve entrapment suffered by claimant was unrelated to work activities but was "a random complication" of the hernia-repair surgery. Dr. Dahlinghaus explained that when nerve entrapment is an issue, it is common for patients to feel fine for a month or two after the surgery and then develop pain. Dr. Dahlinghaus did not offer an opinion as to the cause of claimant's initial hernias diagnosed in May 2006.

¶ 30 On August 23, 2007, at the request of the employer, Smurfit-Stone, claimant saw Dr. Robert H. Geller, a general surgeon. In a September 6, 2007, letter, Dr. Geller listed claimant's diagnosis as "right inguinal nerve entrapment." Dr. Geller opined "that the inguinal pain bilateral [] was from the hernia's [*sic*] in May '06." He offered no medical opinion regarding the cause of the May 2006 hernias, but noted it could have been caused by lifting or straining, and that "it [was] possible [claimant's] weight lifting activities contributed to his ill being" or that claimant's "condition was exacerbated due to lifting of items at a garage sale on July 31, 2007."

¶ 31 Because both the employer and Altivity refused to pay for the procedure

recommended by Dr. Dahlinghaus, claimant applied for public aid benefits and was approved in the Spring of 2008. Thereafter, claimant saw Dr. Yuan Chen, a neurologist, who confirmed the diagnosis of nerve entrapment and recommended "cryo-ablation," a procedure where the nerves are destroyed by freezing. Claimant underwent a series of these procedures which were successful. Claimant testified the pain he experienced following the May 2006 surgery completely abated.

¶ 32 The arbitrator concluded that on May 4, 2006, claimant suffered an accident that arose out of and in the course of his employment and that claimant's nerve entrapment condition was causally related to the accident. The arbitrator ordered the employer to pay (1) temporary total disability (TTD) benefits for 90 weeks; (2) \$21,233.98 in outstanding medical bills; and (3) permanent partial disability (PPD) benefits for 25 weeks.

¶ 33 On review, the Commission unanimously reversed the arbitrator's decision finding claimant failed to prove an accident that arose out of and in the course of employment.

¶ 34 On judicial review, the circuit court of Cook County confirmed the Commission's decision. This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 On appeal, claimant asserts the Commission's determination that he failed to prove a compensable injury which arose out of and in the course of his employment was against the manifest weight of the evidence.

¶ 37 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "The phrase 'in the course of' refers to the time, place, and

circumstances under which the accident occurred. [Citation.] The 'arising out of' component addresses the causal connection between a work-related injury and the employee's condition of ill-being." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, 993 N.E.2d 473.

¶ 38 "The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve, and its finding in that regard will not be set aside on review unless it is against the manifest weight of the evidence." *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 24, 990 N.E.2d 284. "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *Id.*

¶ 39 In workers' compensation cases, the Commission is the "ultimate decision maker." *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). "It is within the province of the Commission to resolve disputed questions of fact, including those of causal connections, to draw permissible inferences from the evidence, and to judge the credibility of the witnesses." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. "[T]he Commission is not bound by the arbitrator's findings, and may properly determine the credibility of witnesses, weigh their testimony and assess the weight to be given to the evidence." *City of Chicago v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1096, 871 N.E.2d 765, 779 (2007). This court's role on review is to determine "whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Chicago Transit Authority v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120253WC, ¶ 24, 989 N.E.2d 608.

¶ 40 In this case, the Commission concluded that claimant failed to meet his burden of proving an accident that arose out of and in the course of his employment. In reaching its decision, the Commission noted discrepancies in claimant's descriptions of the onset of symptoms and mechanism of injury between his report of injury relative to the May 4, 2006, accident, his testimony at the hearing, and his application for workers' compensation benefits. Additionally, the Commission pointed to the testimony and evidence regarding claimant's weight lifting and physical transformation in the months preceding the May 4, 2006, accident as evidence the injury may have been sustained outside of work. The Commission further noted a lack of evidence corroborating claimant's claim that he sustained a work related injury on May 4, 2006.

¶ 41 Here, claimant testified that on May 4, 2006, he was pushing a roll of material weighing between 1,000 and 1,500 pounds with a manual pallet jack when he "felt a really sharp burning pain, pain [he] never felt before in the past that was really severe" in his groin. However, when claimant sought treatment later that same day at Kishwaukee's emergency department, he complained of having groin pain for the past 24 hours and discomfort in the region of his groin for two weeks. Claimant did not mention suffering a work related injury to emergency room personnel. When claimant saw Dr. Klade the next day, he complained of a "[two to] three-week history of right groin pain and recent onset of left groin pain." Again, he failed to mention a work related injury suffered on May 4, 2006. At the hearing, claimant admitted on cross-examination that he had pain in his groin in the weeks preceding the alleged accident. In his application for adjustment of claim filed on February 13, 2007, claimant specified that his injury occurred as a result of "repetitive lifting, pushing, and pulling," rather than a specific work incident on May 4, 2006. We also note that none of claimant's treating

physicians offered any opinion as to the cause of his hernias or indicated that his injuries were sustained at work.

¶ 42 Further evidence supporting the Commission's assessment that claimant was not credible is found elsewhere in his testimony. For example, claimant testified that prior to May 2006 he experienced no pain in his groin; however, medical records show that claimant saw Dr. Shah and Dr. Aron in February 2002 due to groin pain. Claimant also stated that he was not employed prior to 1999—when he was hired by the employer. However, claimant later testified he filed a workers' compensation claim in 1998 when he "strained [his] back working on the job" at Elgin Industry. Additionally, claimant testified he did not undergo a pre-employment physical examination before being offered a position at the school, but records from the school show he received a physical examination by a Dr. Beck on October 19, 2007, as was required by the school's policy. Claimant also testified that since he left Altivity's employment he had not sustained or reported any work related injuries at any other job. Contrary to his assertion, records from the school show that claimant sought treatment for a work injury sustained on July 24, 2009, after he "slipped and fell hitting his arm/hand on a door."

¶ 43 Based on the above, we cannot conclude the Commission's determination claimant failed to prove an accident that arose out of and in the course of his employment was against the manifest weight of the evidence.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the circuit court's judgment, confirming the Commission's decision.

¶ 46 Judgment affirmed.